

In re ) Fair Hearing No. 15,430  
 )  
Appeal of )

The petitioner appeals a decision by the Department of Social and Rehabilitation Services (SRS) revoking her Family Day Care Home Registration certificate. The issue is whether the petitioner violated regulations involving the health and safety of children in her care and, if so, whether the Commissioner properly exercised his discretion in determining that she should not be a registered day care provider due to those violations.

1. The petitioner has been operating a registered day care out of her home. As part of her certification, the petitioner was required to and did read the regulations for day care home providers, and she participated in SRS orientation training for new registries.

2. In August, 1997, SRS received a complaint that the petitioner was caring for more than the maximum of six preschool children allowed by SRS regulations. On a visit to the petitioner's home on September 3, 1997, by the SRS licensor, the petitioner admitted to the licensor that on several occasions in July and August, 1997, she had cared for more than six preschool age children at one time and had

also cared for more than two children under the age of two at the same time. The petitioner signed an acknowledgement that this was a "serious violation", that she understood the requirements of the regulation, and that the situation would be corrected.

3. On October 29, 1997, the SRS licensor visited the petitioner's home and found that the petitioner was again caring for more preschool children than allowed by the regulations. Again, the petitioner signed an acknowledgement that she would notify parents of this violation and immediately correct it.

4. The SRS Licensing Supervisor visited the petitioner's home on February 12, 1998, at which time the petitioner was again over capacity (nine preschool children were present). The petitioner admitted the violation but stated she needed the money generated by caring for the extra children. The petitioner again agreed to correct the violation, and the supervisor told her SRS would notify her of its response to these violations.

5. On February 25, 1998, the supervisor again visited the petitioner's home and found seven preschool children present.

6. On March 2, 1998, SRS notified the petitioner that it was revoking her day care registration.

7. At a Commissioner's Review held on May 1, 1998, and again at her fair hearing, held on June 23, 1998, the

petitioner admitted the factual basis of SRS's action. She maintains, however, that she was unable to afford dropping the number of children in her care and that she disagrees with the wording of the regulations regarding capacity.

ORDER

The decision of the Department to revoke the petitioner's day care registration certificate is affirmed.

REASONS

The Commissioner of the Department of Social and Rehabilitation Services has the authority to adopt rules and regulations governing the day care registration program, including standards to be met and conditions for revocation.

33 V.S.A. § 306(b)(1). Those rules and regulations are required by statute to be "designed to insure that children in . . . family day care homes are provided with wholesome growth and educational experiences, are not subjected to neglect, mistreatment or immoral surroundings." 33 V.S.A. § 3502(d). Such rules and regulations have been adopted and are found in the "Regulations for Family Day Care Homes", effective April 1, 1993. Furthermore, the Commissioner has the specific authority to revoke registrations "for cause after hearing". 33 V.S.A. § 306(b)(3).

Among their regulations adopted by the Commissioner are

the following:

DEFINITIONS

PRESCHOOL CHILDREN -	Children from 3 years of age until their admission to first grade.
REVOCATION -	The formal act of closing a day care home due to violation of these regulations. . . .
SERIOUS VIOLATION -	A violation of group size, staffing requirements, or any violation which immediately imperils the health, safety or well-being of children. Serious violations may also include corporal punishment, lack of supervision, physical or sexual abuse or health and safety requirements.

SECTION II - PROGRAM

1. A registrant may provide care in their home to six (6) children at any one time and, in addition to the six may care for up to four (4) school age children for not more than four hours daily per child. . . .

Option A - Six children any age including up to two children under the age of two per caregiver. . . .

If the petitioner has violated the above regulation, the Commissioner has the authority to determine what action to take and the "cause" needed to revoke a day care registration certificate if he deems it an appropriate remedy. 3 V.S.A. § 8814, Huntington v. SRS, 139 Vt. 416 (1981), Fair Hearing No. 10,414. The regulatory definition specifically lists group size as a "serious violation" of the regulations, and common sense would so dictate. The Board may only overturn such a decision if the Commissioner has acted arbitrarily, capriciously or has otherwise abused

his discretion. See Fair Hearing Nos. 15,027 and 12,804.

No argument is made by the petitioner here that she was unaware of the regulations or that they place unreasonable requirements on providers. She did argue that the above regulation should be interpreted as allowing six preschool children and an additional two children under the age of two per care giver. However, in light of the several acknowledgements signed by the petitioner and the numerous times the regulations were explained to her by SRS, this argument is clearly disingenuous and self-serving. It is simply absurd to read the above regulation as allowing more children in a home if some of them are under two years of age.

SRS has established that the petitioner, despite several warnings and assurances on her part that it would not happen again, repeatedly committed serious violations of its regulations regarding child capacity. Its decision revoking the petitioner's day care registration on this basis must, therefore, be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

# # #